

MILES A. RUCH

VS.

Respondent

AND

Insurance Carrier

Claimant requested post award medical treatment subsequent to a September 3, 1992, settlement which left future medical open upon application to and approval by the Director. This settlement, which stemmed from a February 6, 1991, injury to claimant's left lower extremity, closed all issues with the exception of the future medical.

On March 6, 1997, claimant filed a workers compensation form E-3 Application for Preliminary Hearing requesting medical treatment from the 1991 injury. Respondent contends claimant's current need for medical care does not stem from the 1991 injury, but from a series of intervening injuries during claimant's employment with other employers.

Before the Appeals Board can consider the issue dealing with the award of medical compensation it must first consider whether it has jurisdiction to decide this issue at this stage of the proceedings. This matter did come before the Appeals Board based upon respondent's appeal from a preliminary hearing which was generated subsequent to claimant filing an E-3 with the Division of Workers Compensation. This E-3, also known as an Application for Preliminary Hearing, was filed pursuant to K.S.A. 44-534a. Appeals from preliminary hearings are controlled by both K.S.A. 44-534a and K.S.A. 44-551. K.S.A. 44-534a restricts the jurisdiction of the Appeals Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Appeals Board upon appeals from preliminary hearing orders. The Appeals Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested. See K.S.A. 44-551.

In this instance, the issue deals with claimant's entitlement to ongoing medical care. K.S.A. 44-534a grants the Administrative Law Judge the jurisdiction to decide issues dealing with the ongoing medical treatment and temporary total disability compensation. As such, neither issue would be considered outside the jurisdiction of the Administrative Law Judge and neither issue is listed in K.S.A. 44-534a as jurisdictional and subject to review by the Appeals Board from the appeal of a preliminary hearing order. As such, the Appeals Board finds it does not have jurisdiction to consider the issue raised by respondent at this juncture of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this review is dismissed and the Order of Administrative Law Judge Bryce D. Benedict dated May 15, 1997, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: James B. Biggs, Topeka, KS
Dennis L. Horner, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director